

PRIVATE INTRUSION RESPONSE

A “LEGAL FOUNDATIONS” SPECIAL STUDY

Report to the
President’s Commission
on Critical Infrastructure Protection
1997



This report was submitted to the President’s Commission on Critical Infrastructure Protection, and informed its deliberations and recommendations. This report represents the opinions and conclusions solely of its developers.

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Preface

Executive Order 13010 established the President's Commission on Critical Infrastructure Protection (PCCIP) and tasked it with assessing the vulnerabilities of, and threats to, eight named critical infrastructures and developing a national strategy for protecting those infrastructures from physical and cyber threats. The Executive Order also required that the PCCIP consider the legal and policy issues raised by efforts to protect the critical infrastructures and propose statutory and regulatory changes necessary to effect any subsequent PCCIP recommendations.

To respond to the legal challenges posed by efforts to protect critical infrastructures, the PCCIP undertook a variety of activities to formulate options and to facilitate eventual implementation of PCCIP recommendations by the Federal government and the private sector. The PCCIP recognized that the process of infrastructure assurance would require cultural and legal change over time. Thus, these activities were undertaken with the expectation that many would continue past the life of the PCCIP itself.

The *Legal Foundations* series of reports attempts to identify and describe many of the legal issues associated with the process of infrastructure assurance. The reports were used by the PCCIP to inform its deliberations. The series consists of 12 reports:

1. *Legal Foundations: Studies and Conclusions*
2. *The Federal Legal Landscape*
3. *The Regulatory Landscape*
4. *Legal Authorities Database*
5. *Infrastructure Protection Solutions Catalog*
6. *Major Federal Legislation*
7. *Adequacy of Criminal Law and Procedure (Cyber)*
8. *Adequacy of Criminal Law and Procedure (Physical)*
9. *Privacy and the Employer-Employee Relationship*
10. *Legal Impediments to Information Sharing*
11. *Federal Government Model Performance*
12. *Approaches to Cyber Intrusion Response*

and two special studies:

- *Information Sharing Models*
- *Private Intrusion Response*

Legal Foundations: Studies and Conclusions is the overall summary report. It describes the other reports, the methodologies used by the researchers to prepare them, and summarizes the

possible approaches and conclusions that were presented to the PCCIP for its consideration. The series has been sequenced to allow interested readers to study in detail a specific area of interest. However, to fully appreciate the scope of the topics studied and their potential interaction, a review of the entire series is recommended.

Introduction

Private Intrusion Response originated among the studies conducted to prepare reports in the *Legal Foundations* series to inform the deliberations and recommendations of the President's Commission on Critical Infrastructure Protection (PCCIP). It was subsequently submitted for publication to the Harvard Journal of Law & Technology by Stevan D. Mitchell, Esq. the PCCIP Commissioner representing the Department of Justice) and Elizabeth A. Banker, Esq., PCCIP Assistant General Counsel.

The views expressed in *Private Intrusion Response* are those of the authors and do not necessarily reflect those of the President's Commission on Critical Infrastructure Protection (PCCIP) or the U.S. Department of Justice.

For more information or to obtain a copy of *Private Intrusion Response*, please contact the Harvard Journal of Law & Technology, (<http://jolt.law.harvard.edu/>).